

HOUSE BILL REPORT

HB 1916

As Passed House:

March 10, 2005

Title: An act relating to authorizing a cigarette taxation agreement between the state of Washington and the Puyallup Indian Tribe.

Brief Description: Authorizing the governor to enter into a cigarette tax agreement with the Puyallup Tribe of Indians.

Sponsors: By Representatives Conway, McIntire, Clements, McCoy, Williams and Chase; by request of Department of Revenue.

Brief History:

Committee Activity:

Finance: 2/22/05, 2/28/05 [DP].

Floor Activity:

Passed House: 3/10/05, 96-0.

Brief Summary of Bill

- Authorizes the Governor to enter into a cigarette tax agreement with the Puyallup Tribe of Indians.

HOUSE COMMITTEE ON FINANCE

Majority Report: Do pass. Signed by 8 members: Representatives McIntire, Chair; Hunter, Vice Chair; Orcutt, Ranking Minority Member; Roach, Assistant Ranking Minority Member; Ahern, Conway, Hasegawa and Santos.

Minority Report: Do not pass. Signed by 1 member: Representative Ericksen.

Staff: Bob Longman (786-7139).

Background:

The rate for the cigarette tax is 142.5 cents per pack of 20 cigarettes. Retail sales and use taxes are also imposed on sales of cigarettes. Revenue from the first 23 cents of the cigarette tax goes to the State General Fund. The next 8 cents are dedicated to water quality improvement programs through June 30, 2021, and to the State General Fund thereafter. The next 101 cents goes to the Health Services Account. The remaining 10.5 cents are dedicated to youth violence prevention and drug enforcement.

Under federal law, the cigarette tax does not apply to cigarettes sold on an Indian reservation to an enrolled tribal member for personal consumption. However, sales made by tribal cigarette retailers to non-tribal members are subject to the tax. Enforcement of state cigarette taxes with respect to tribal retail operations has involved considerable difficulty and litigation, with mixed results.

In the 2001 session, the Governor was authorized to enter into contracts concerning the sale of cigarettes with federally recognized Indian tribes located within Washington. Contracts must be for renewable terms of eight years or less. Cigarettes sold on Indian lands during the contracts term are subject to a tribal cigarette tax and are exempt from state cigarette and sales and use taxes.

In general, cigarette contracts must:

- (1) limit tribal retailing to sales of cigarettes by tribes or Indians in Indian country;
- (2) prevent sales to any person under the age of 18 years;
- (3) require that the tribal cigarette tax be used for essential government services;
- (4) require the use of tribal cigarette tax stamps;
- (5) include provisions for compliance;
- (6) require that tribal retailers purchase cigarettes only from approved sources;
- (7) allow resolution of disputes through a non-judicial process, such as mediation; and
- (8) include a procedure for correcting violations of the contract and provision for termination of the contract should violations not be resolved.

The original authorization for the Governor, in 2001, was to enter into agreements with the Squaxin Island Tribe, the Nisqually Tribe, the Tulalip Tribes, the Mukleshoot Indian Tribe, the Quinault Nation, the Jamestown S'Klallam Indian Tribe, the Port Gamble S'Klallam Tribe, the Stillaguamish Tribe, the Sauk-Suiattle Tribe, the Skokomish Indian Tribe, the Nooksack Indian Tribe, the Lummi Nation, the Chehalis Confederated Tribes, and the Upper Skagit Tribe. Authority was subsequently granted to enter into agreements with the Yakama Nation, the Suquamish Tribe, the Snoqualmie Tribe, the Swinomish Tribe, the Quileute Tribe, the Samish Indian Nation, and the Kalispel Tribe.

Summary of Bill:

The Governor is authorized to enter into a cigarette tax agreement with the Puyallup Tribe of Indians. Unlike previously authorized tribal cigarette tax contracts, the Puyallup Agreement must:

- (1) set the tax rate at a flat \$11.75 per carton (\$1.175 per pack);
- (2) require revenue sharing of 30 percent to the state, and prohibit any negotiation regarding the distribution of the state's revenue share;
- (3) require the retail selling price not be set lower than wholesale sales price;
- (4) require the tribe, if acting as wholesaler, to not sell for less than the price paid by the tribe plus the tribal tax;

- (5) require the tax to be added on to the retail selling price, and not be absorbed by the seller;
- (6) require tribal retailers to obtain cigarettes through state-licensed wholesalers; and,
- (7) include provisions for sharing of information between the tribes and the state.

Like the existing tribal contracts, the Puyallup Agreement must be renewable for eight years or less, require the use of tribal tax stamps, include provisions for tax compliance, require tribal retailers to buy from approved wholesalers or manufacturers, include procedures to correct mistakes and mediate disputes, and require that tribal tax revenue be used to fund essential government services.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Testimony For: This bill will put an end to 30 years of conflict over cigarette sales between the Puyallup Tribe and the state. It is a tremendous step forward. The bill provides strong price control and tax compliance provisions. Tribal retailers must buy all product from licensed wholesalers with stamps applied. It greatly reduces the cigarette price difference between tribal and private retailers. The different needs of an urban tribe are recognized by retaining enough price difference to allow urban tribal cigarette retailers to survive. A key difference between this bill and other tribal agreements is the revenue sharing provision. This agreement includes all of the strong tax stamp, auditing, compliance, and intergovernmental cooperation provisions of the other tribal agreements. All tribal revenue from Puyallup cigarette taxes will go for essential government services, as is the case for other tribal cigarette taxes.

Testimony Against: The Puyallup Tribe should have the same cigarette agreement as other tribes. The lower tax rate allowed under this bill is unacceptable. We don't understand why a cigarette tax agreement that works for rural tribes will not work for an urban tribe. A private retailer cannot compete with a lower cigarette price that is available from a tribal retailer just across the street.

Testified: (In support) Representative Conway, prime sponsor; John Bell, Puyallup Tribe; and Leslie Cushman, Department of Revenue.

(Opposed)

T.K. Bentler, Washington Association of Neighborhood Stores.